IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 332 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

M B SAIYAD C/O V P VAISYA

Appearance:

1. Special Civil Application No. 332 of 1993

MR YOGESH S LAKHANI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/10/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Krina Thakkar for Mr. Lakhani for the petitioner. Notice of admission has been

served upon the respondent but the respondent has not remained present either in person or through any advocate and, therefore, the matter has been taken up for final hearing in absence of the respondent.

2. By way of this petition under Article 226/227 of the Constitution of India, the petitioner corporation has challenged the judgment and award made by the labour Court, Bharuch in Reference No. 140 of 1984 newly numbered as Reference No. 524 of 1990 dated 30th March, 1992 wherein the labour court has granted reinstatement with continuity of service and granted back wages 40 per cent back wages for the intervening period. Date of dismissal of the respondent is 9th May, 1980 and the industrial dispute was raised by the respondent which was referred to for adjudication on 19th January, 1983. At the time of issuing rule, this court has not stayed the reinstatement but has stayed the award qua back wages alone with a rider that if the petitioner fails in the petition, the petitioner will pay the back wages as awarded by the labour court with 12 per cent interest thereon to the respondent workman.

Learned advocate Ms. Thakkar appearing for Mr. Lakhani for the petitioner has submitted that it was alleged against the workman concerned that he had reissued the tickets of Rs.00.45 ps. and has not issued one ticket to the passenger and there was some wrong punching in the ticket and Rs.00.80 ps. was found short and on that basis, the respondent was charge sheeted and after completion of the departmental inquiry, he was dismissed from service. She has submitted that the labour court has, after appreciating the evidence on record, has come to the conclusion that the charge of reissuance of tickets levelled against the respondent has not been found to have been proved and as regards two charges of non issuance of ticket to the passenger and non punching of ticket and shortage of Rs.00.80 ps., they were held to have been proved before the labour court. In that circumstances, according to her submission, past record, wherein there were 14 defaults, was required to be taken into consideration by the labour court while passing the award but the labour court has not taken into consideration the past record consisting of fourteen defaults and has mechanically granted reinstatement with 40 per cent back wages for the intervening period which covered the period of twelve years from the date of dismissal. According to her submission, the respondent was dismissed from service on 4.5.1980 and the dispute was raised by the respondent after the period of about three years on 19th January, 1983. Therefore, according

to her submission, in view of the delay in raising of an industrial dispute, the labour court ought not to have entertained the reference. She has submitted that instead of appreciating that aspect, the labour court has also granted back wages even for the period prior to the date of raising of an industrial dispute and in doing so, the labour court has erred. She has further submitted that if the period prior to the raising of an industrial dispute is excluded from the intervening period from the date of dismissal till the date of award, the remaining period of pendency of the reference before the labour court was about nine years and it was not the case that the reference remained pending for such a pretty long period because of the fault on the part of the petitioner corporation. Therefore, the labour court is also not justified in granting back wages. Therefore according to her submission, award of reinstatement with 40 per cent of back wages for the intervening period is not sustainable and, therefore, same is required to be quashed and set aside.

I have considered the submissions made by Ms. Thakkar, learned advocate for the petitioner corporation. I have also perused the award of reinstatement made by the labour court with forty per cent of the back wages for the intervening period. Looking to the record and the award made by the labour court, in respect of the reissuance of the ticket and other charges such as non issuance of ticket, wrong punching and shortage of cash etc. which were believed to have been proved by the inquiry officer during the course of inquiry have been discussed by the labour court in paragraph 9 of the award. In paragraph 13 of the award, the labour Court has, after discussing the finding and appreciating the evidence which was led in the departmental inquiry and also after considering the reply given by the workman in the departmental inquiry, ultimately come to the conclusion that the charge of reissuance of ticket has not been proved from the record. The labour court has also come to the conclusion that the charges of ticket which has been found not proper punched and non issuance of ticket and shortage of Rs.00.80 ps. in cash of the workman are proved against the workman. Observations to that effect have been made by the labour court in para 19 of the award. Thereafter the labour court has examined the question of penalty and was of the view that the charge of reissuance of ticket was not proved and the findings given by the inquiry officer in respect of that charge are baseless and, therefore, the labour court was of the view that the impugned order of dismissal based upon the findings in respect of the reissuance of ticket

is unreasonable and illegal. The labour court was of the view that on the basis of the proved charges, light punishment could be imposed upon the workman and the action of dismissal could be taken only as a last measure and before dismissing him from service, steps for stoppage of his increment/s, withholding of promotion, suspension etc. could be taken. The labour court was of the view that the on the basis of the charges proved before the labour court, negligence on the part of the workman could be said to have been established but on the basis of negligence on his part, he cannot be dismissed from service and, therefore, punishment of dismissal is harsh and excessive because same is affecting the whole family of the workman and, therefore, in view of such findings, award of reinstatement was made by the labour court with continuity of service. Considering the deposition of the workman on oath at Exh. 11 wherein in his cross examination, it has been deposed by the workman that he was doing the labour work in agriculture; may get Rs.2.00 to Rs.3.00 per day; some time may not get the work; attempts were made for getting the service but could not secure the service, the labour court was of the view that even if the story narrated by the workman in his cross examination is believed, it can be said that the workman was getting much less than what he has been getting from the corporation during his service with the corporation and from the earning of Rs.2.00 to Rs.3.00 per day, workman cannot survive and, therefore, it cannot be considered as gainful employment. The labour court was of the view that burden to prove that the workman has been employed gainfully elsewhere is on the petitioner corporation and the corporation has not discharged that burden. Therefore, considering that there was mere negligence on the part of the workman on the basis of the charges proved before the labour court and also considering the fact that the workman has not been employed gainfully elsewhere during the intervening period, and also considering small earning as per the cross examination of the workman at Exh. 11, the labour court made the award and directed the petitioner corporation to reinstate the workman with continuity of service with forty per cent of the back wages for the intervening period from the date of dismissal till the date of his reinstatement.

I have perused the award. I have also gone through the reasons assigned by the labour court for granting reinstatement and 40 per cent of the back wages with continuity of service. I am of the view that there is some substance in the submission made by Ms. Krina Thakkar, learned advocate for the petitioner corporation

that the labour court has committed an error in granting 40 per cent of the back wages for the intervening period from the date of dismissal till reinstatement. From the record, it is becoming clear that the dispute was raised belatedly after about three years from the date of dismissal of the respondent workman. I am, therefore, of the view that the award of back wages to that extent is required to be modified. At the same time, it is also necessary to note one more aspect that the serious charge of misappropriation was not found to be proved and whatever charges were found to have been proved were minor in nature establishing only negligence on the part of the respondent workman and, therefore, considering that aspect and also considering that there was no gainful employment of the respondent workman, the labour court has denied full back wages and has granted only forty percent of the back wages. Considering the reasons given by the labour court for holding that the impugned order of dismissal is unreasonable and illegal, I am of the view that the labour court is justified in reinstating the workman. Therefore, that part of the award is not required to be interfered by this court. However, as stated earlier, in view of the delay in raising of an industrial dispute on the part of the respondent workman, according to my opinion, award of back wages is required to be modified by clarifying that the workman is entitled to the back wages from the date of the reference till the date of reinstatement without disturbing the award of reinstatement with continuity of service. Therefore, in declaring that the order of dismissal is harsh, excessive illegal and unreasonable, the labour court has not committed any error.

According to my view, it was the finding recorded by the labour court that there was some negligence on the part of the respondent workman on the basis of the charges proved before the labour court. It is also a fact that the matter remained pending before the labour court for pretty long period. It is also an admitted fact that there was delay in raising an industrial dispute and the workman has not explained such delay. Therefore, considering these over all circumstances, and also considering the fact that the petitioner is a public body, according to my view, to some extent, award of back wages is required to be reduced. In the facts and circumstances of the case, instead of 40 per cent, it would be just and proper to direct the petitioner corporation to pay the back wages at the rate of 25 per cent and that too from the date of raising of an industrial dispute till the date of his actual reinstatement in service with continuity of service.

This Court cannot reappreciate the findings given by the labour court unless it is proved that the same are perverse. Here, in the facts and circumstances of the case, the petitioner has not been able to establish that the findings recorded by the labour court for reinstating the workman are perverse and, therefore, this court is not interfering with that part of the award. Therefore, this petition is required to be allowed in part by modifying the award and clarifying that the workman is entitled to 25 per cent of the back wages only from the date of the reference till the date of his actual reinstatement. Since this court is modifying the award in respect of the back wages, therefore, now the petitioner is not required to comply with the directions to pay the back wages with 12 per cent interest, issued by this court while admitting this petition.

For the reasons recorded hereinabove, this petition is partly allowed. The award made by the Labour Court, Bharuch in Reference No. 140 of 1984 newly numbered as Reference No. 524 of 1990 dated 30th March, 1992 is hereby modified only in respect of back wages by clarifying that the respondent workman is entitled to only 25 per cent of the back wages for the intervening period from the date of the reference till the date of his actual reinstatement. It is, however, clarified that the rest of the directions as regards reinstatement and continuity of service have not been disturbed by this court. Rule is made absolute in aforesaid terms with no order as to costs.

This being an old matter of the year 1992 and also considering the fact that the date of dismissal is of the year 1980, petitioner corporation is directed to pay the back wages to the respondent workman as per the award of the labour court as modified by this court at the rate of 25 per cent from the date of the reference till the date of his actual reinstatement with continuity of service within three months from the date of receipt of the copy of this order.

25.10.2002. (H.K. Rathod,J.)

Vyas